

1 extended one day on the trial briefs and on the
2 Bureau's comments.

3 MR. SEIVER: Would Your Honor like to take
4 a short break before we dive into Complainants'
5 exhibits?

6 JUDGE SIPPEL: Oh, well, I'm going to do
7 more than that. I mean, it's quarter to 12. I think
8 we ought to take a lunch break and then come back here
9 at about -- can we do it at one o'clock? That's a
10 little bit tight, but let's do it at one.

11 MR. CAMPBELL: Before we do that, Your
12 Honor, I don't think we got a ruling on the motion to
13 admit the exhibits that are contained in the
14 deposition designations Gulf Power G through L.

15 JUDGE SIPPEL: Well, there's been no
16 objection to it. Those are coming in, too. Now, I'm
17 a little bit -- I'm not leery. I'm still not
18 altogether clear how you intend to handle that. These
19 are depositions. Let's say Exhibit G would be the
20 deposition excerpts of Bruce Burgess, and that means
21 what? There will be certain pages from his
22 deposition?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. CAMPBELL: That is correct, Your
2 Honor.

3 JUDGE SIPPEL: Including documents?

4 MR. CAMPBELL: There were not new pages.
5 There will be documents that are referenced. We would
6 move to admit the documents with the testimony, the
7 testimony that support --

8 JUDGE SIPPEL: With the excerpted
9 testimony or with the whole testimony?

10 MR. CAMPBELL: The excerpted testimony.

11 JUDGE SIPPEL: So that the excerpted
12 testimony plus documents --

13 MR. CAMPBELL: Correct.

14 JUDGE SIPPEL: -- identified documents.

15 MR. CAMPBELL: Correct.

16 JUDGE SIPPEL: Yes. I mean, I don't have
17 any problem with that. Again, I don't want to put too
18 short a time line on this. I mean, you need a couple
19 of days to do it. I'm not going to be around, and
20 there's not going to be anything done between now.
21 It's, you know, kind of a holiday period. If you all
22 don't mind working on it.

1 MR. CAMPBELL: We need to work with the
2 other side to clarify what the documents are anyway.
3 So why don't we take until that next Monday?

4 JUDGE SIPPEL: Well, why don't you take
5 until next Tuesday?

6 MR. CAMPBELL: Okay.

7 JUDGE SIPPEL: I'm not coming in until
8 Wednesday. Surprise me and have no problems.

9 MR. CAMPBELL: That's good with us, Your
10 Honor.

11 MR. COOK: For clarification, this is a
12 filing that they will make elucidating what deposition
13 exhibits they wish to have admitted into evidence?

14 JUDGE SIPPEL: That's exactly right.
15 Everything, yes. Now, yes, that's exactly right.
16 It's G through L on their list, on the list that I'm
17 looking at, which is my paralegal's list, and A
18 through G -- A through F are the direct testimonies,
19 and they're coming in in a different way.

20 Now, can we do A through F today or are
21 they --

22 MR. COOK: That's oral testimony, Your

1 Honor, or written testimony.

2 JUDGE SIPPEL: It's written testimony.

3 MR. COOK: Right, right. Written
4 testimony.

5 JUDGE SIPPEL: Is it here today? Is it in
6 a form to introduce?

7 MR. CAMPBELL: I don't think either side
8 is prepared for that today because that would require
9 us to go into the relevance or hearsay or whatever
10 objection they had.

11 MR. COOK: I think both parties understood
12 today's proceeding to focus only on --

13 JUDGE SIPPEL: On documents. All right.
14 Okay.

15 MR. LANGLEY: Your Honor, before we break
16 for lunch, could we have a moment to confer with them?
17 Because we might only have another 15 or 20 minutes of
18 work left to do. If it's okay with --

19 JUDGE SIPPEL: You mean your side because
20 we've got to go to their side now.

21 MR. LANGLEY: Right, and I'm thinking that
22 their side might actually go pretty fast.

1 JUDGE SIPPEL: Yeah, so what do you want?
2 A 15 minutes break or something?

3 MR. LANGLEY: How about five?

4 JUDGE SIPPEL: Five minutes is fine.

5 MR. LANGLEY: Well, give us ten. We can
6 all use the restroom and then we can have all
7 discussion.

8 JUDGE SIPPEL: All right. I'll come back
9 -- is that okay? Can we go off and proceed?

10 I'll come back at five minutes of -- I
11 can't see that clock. What does it say? It's quarter
12 of, right? I'll be back at five of 12.

13 Thank you

14 (Whereupon, the foregoing matter went off
15 the record at 11:41 a.m. and went back on
16 the record at 11:51 a.m.)

17 JUDGE SIPPEL: We're on the record.

18 MR. SEIVER: Thank you, Your Honor.

19 I don't want to trouble you, Your Honor,
20 with housekeeping. You were generous in saying yes to
21 whatever it was that we asked for, but we were trying
22 to establish the hours of the hearing so we would know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 what the protocol will be on a daily basis.

2 I will likely have a secretary from my
3 office with me if that would be all right. I will
4 have her sign if you want me to have her sign the
5 declarations so she can be here with us to either
6 bring things in and out as we need them.

7 We were going to use your assistant
8 mentioned Hearing Room B is under your control, and we
9 were going to split that into the good guys and the
10 bad guys' sides.

11 JUDGE SIPPEL: Well, I don't have any
12 problem with talking about it, but do we have
13 something about this morning that we were going to
14 talk about? Can we get that finished first and
15 then --

16 MR. SEIVER: Absolutely, Your Honor.

17 JUDGE SIPPEL: -- we can talk about the
18 things you're talking about.

19 MR. SEIVER: Sure.

20 JUDGE SIPPEL: Even maybe after lunch.
21 They're good points. I was going to get to that at
22 some point today before I leave.

1 Go ahead. What do you have, Mr. Langley?

2 MR. LANGLEY: We had finished with our
3 exhibit list, and I think we were going to turn next
4 to the Complainants' list, and what I had asked for a
5 short break to discuss was whether or not we needed to
6 come back after lunch.

7 And I don't know how long it will take to
8 address Complainants' documents. Our objections are
9 limited and categorical, and the ruling on the
10 objection will handle a large number of documents. So
11 if you wanted to go ahead and press through that,
12 we're willing to do that. If you would prefer to
13 break for lunch and come back and do it, that's fine,
14 too.

15 JUDGE SIPPEL: All right. I don't think
16 there's any reason to press. I mean, I can understand
17 if you have a schedule problem. What do you think,
18 Mr. Seiver?

19 MR. SEIVER: I'm happy either way, Your
20 Honor. If you wanted us to do an exhibit or a group
21 of exhibit by exhibit proffers, that probably is going
22 to take a little bit longer. Mr. Langley's objections

1 are relatively limited though, but doing the proffer,
2 I think Your Honor would rather us explain the
3 relevance of each of the exhibits. It will take some
4 time.

5 JUDGE SIPPEL: You know, I'm glad to hear
6 all of this. I mean, this is great news to me. So
7 this should not be a belabored process this afternoon,
8 not that this morning's was, but it should be shorter
9 than this morning.

10 All right, and I mean, the Bureau has been
11 participating in this, and I think everybody could use
12 a little bit of a walk-around for an hour or so

13 MR. SEIVER: Very well, Your Honor.

14 JUDGE SIPPEL: Okay. We'll come back
15 at -- I did tell you that, yes. I'm going to be out
16 of town. I'll get to the point that Mr. Seiver is
17 talking about when we comeback. So I'm going to --
18 it's five of 12.

19 Now, is one o'clock too tight? I can get
20 back easy, but is it too tight for you all?

21 MR. SEIVER: We can go down through the
22 courtyard.

1 JUDGE SIPPEL: One o'clock then. We'll be
2 back here at one o'clock and finish up.

3 Thank you very much.

4 (Whereupon, at 11:54 a.m., the hearing was
5 recessed for lunch, to reconvene at 1:00 p.m., the
6 same day.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

AFTERNOON SESSION

(1:04 p.m.)

JUDGE SIPPEL: Okay. We're back on the record.

We're back to where we were when we went off the record with respect to introduction of documents. Before we get into that, however, Mr. Seiver, you did ask me for some scheduling information. I'm going to try to give it to you now so I don't forget it.

I'm going to start at nine in the morning. I hope that that doesn't put too much pressure on, you know, counsel and witnesses on the other side of town, but here's how I want to do it. Nine to 12 in the morning with a short break at 10:30, and 1:15 in the afternoon to four in the afternoon with a 2:30 break. And, you know, I'll try and stay on that schedule as best I can. You have to cooperate with me on it.

If a witness needs to get out of town, is going to get out of town and he needs 15 minutes to finish up, I mean, of course we'll do that, but I want to stay as close to this time as I can.

1 I want to let you know ahead of time
2 there's certain Fridays that I will not be here.
3 We're going to start on the 24th. I will not be here
4 Friday, the 28th, and I will not be here Friday, the
5 5th, and I will not be here Friday, the 12th, and I
6 will not be here Friday, the 26th. So you can plan
7 your time accordingly.

8 Now, I'm hoping that maybe we won't have
9 to go as long as the 26th.

10 MR. SEIVER: Of May.

11 JUDGE SIPPEL: Oh, yeah, May.

12 MR. SEIVER: I'm hoping we're not here
13 either, Judge.

14 MR. COOK: Your Honor, the parties have
15 thought in terms of about a week.

16 JUDGE SIPPEL: All right.

17 MR. COOK: Because the trial --

18 JUDGE SIPPEL: No, I understand.
19 Obviously what I'm telling you is that I'm not going
20 to be going a full week. So I wanted to let you know
21 ahead of time for obvious reasons from your
22 standpoint, and you know, I understand what Mr.

1 Campbell is saying, too. It's very difficult to
2 predict it to the day, but, yeah, we shouldn't be in
3 hearing time more than five business days, five full
4 business days, I wouldn't think.

5 MR. SEIVER: I have another item.
6 Patricia Kravtin, our economics expert, my order of
7 witnesses -- and we hadn't discussed order of
8 witnesses -- she was going to be my last witness. Her
9 problem is that she's got the nonrefundable plans to
10 go with her family out of town on the 29th. I wasn't
11 aware that Your Honor wasn't going to sit on the 28th
12 because I tended to agree with Gulf that I thought
13 five business days, and I thought at worst she would
14 finish on the 28th.

15 If we're going a lot slower than we
16 expected, Your Honor, would it be possible for me to
17 take her out of order?

18 JUDGE SIPPEL: Sure. Oh, yeah.

19 MR. SEIVER: And we don't mess everything
20 up. I don't know. I'm assuming Gulf's case will be
21 done by then, well before, I would hope, before then.
22 I don't know.

1 JUDGE SIPPEL: Well, we'll see. I mean,
2 we'll see. It starts on the 24th. I had it starting
3 time at 9:30, but I'd like to shorten it a little bit
4 to nine. Usually we can just get more done that way
5 and trying to accommodate out of town witnesses.

6 MR. LANGLEY: Your Honor, could you give
7 us some guidance on opening statement and closing
8 argument in terms of time?

9 JUDGE SIPPEL: You won't need it. It
10 really won't be necessary. You know, if you want to
11 make a ten or 15 minutes opening statement, that's
12 fine. I mean, it's your time, but as I say, it is all
13 going to come down to the record and the proposed
14 findings.

15 Mr. Cook.

16 MR. COOK: Your Honor, on the proposed
17 findings I understood that your comments just now and
18 previously did entertain the ability of each party to
19 file proposed findings. I wondered would we have any
20 information perhaps from the court reporter about how
21 soon the transcripts would be available?

22 And I would ask maybe if Gulf is agreeable

1 to this, we think in terms of something like 30 days
2 after the parties receive their transcripts if that's
3 agreeable to Your Honor.

4 JUDGE SIPPEL: Well, yeah, we'll set that
5 out. The transcripts, I think there's a contract of
6 sorts that says that we get it around ten days, that
7 we have a ten-day turnaround time. So by, let's say,
8 two weeks after we close the proceedings here, you
9 should have all the transcripts you need, and you
10 know, we'll target it from that date, from the date
11 that you received your last transcripts, and I usually
12 do 30 days. I usually do 30 and 20.

13 This case is a little more complex than
14 maybe the run of the mill case certainly. You know,
15 I'm adjustable to giving you a few more days' time.
16 I would rather you take the time and do it, you know,
17 spend the extra time on it honing it down and, you
18 know, trying to be putting something together just to
19 meet a time deadline.

20 But I'll work with you on that one when we
21 get to the end. I don't need to set the dates now
22 because we don't know when you're going to finish.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 That just will not be a problem.

2 I mean, I can accommodate, you know, if
3 there are vacations and things like that. We'll be
4 accommodating.

5 I don't think there's anything else. I
6 mean, just tell your witness to bring in their own
7 bottle of water for their own comfort, but be a little
8 bit discrete about it, and they can certainly carry it
9 with them up to the witness stand. That goes without
10 saying, I think.

11 You've got access to the witness room.
12 The witness room will be open for you.

13 mr. Seiver, you were talking about a
14 photocopying machine, bringing one in?

15 MR. SEIVER: Yes, Your Honor, if you
16 prefer. I think what we'll set up probably is a
17 laptop and a printer in the witness room if that's all
18 right with Your Honor, just in case there need to be
19 documents to be printed that are in our databases.

20 JUDGE SIPPEL: That's fine.

21 MR. SEIVER: And then if people have fund
22 drives, we could copy it from anybody's computer if

1 something needs to be done, but the large scale
2 copying, if we go to the Public Reference Room, that's
3 a bit of a hike, and we thought maybe --

4 JUDGE SIPPEL: Oh, that's fine. That
5 should be no problem because we have exclusive use of
6 that room. So we're not interfering with anybody.

7 MR. SEIVER: And I had suggested that we
8 take Hearing Room B. Your Administrative Assistant
9 that was in earlier --

10 JUDGE SIPPEL: Yeah.

11 MR. SEIVER: -- she said that you control
12 that room as well, and since there is a wall down the
13 middle, perhaps Gulf could have the one side and we
14 could have the other just for maintaining, you know,
15 maybe -- would we be able to eat our lunches in there
16 if somebody brought us back our sandwiches?

17 JUDGE SIPPEL: Sure. Just keep it clean.

18 MR. SEIVER: That would be great.

19 JUDGE SIPPEL: Just keep it clean. Okay.
20 Now, did she indicate that that was okay, that she
21 didn't have any logistical problem? In other words,
22 we'd have three rooms tied up. We'd have this

1 courtroom, and then there would be Courtroom B, and
2 then there would be the witness room.

3 MR. SEIVER: Yes, Your Honor.

4 JUDGE SIPPEL: Well, I don't see why not.

5 MR. SEIVER: She didn't think except that
6 locking and unlocking the witness room, I guess, is
7 just an extra thing to make sure it's accommodated
8 because that I think --

9 JUDGE SIPPEL: That is operated, I think,
10 by key. I think there's a hard key lock for that for
11 some reason, and coordinating the key might be a
12 little bit tricky at the end of the day, but we'll
13 work around it.

14 You can, you know, feel free to leave your
15 materials here in the courtroom. I can't guarantee
16 it. I cannot absolutely guarantee, but this room is
17 locked, and if somebody is going to be working here
18 after I'm out of here and the reporter, be sure you
19 do, whoever is the last out, be sure it does get
20 locked.

21 Yeah, there's -- how do you do that?
22 There is a lock.

1 MR. COOK: It looks like you need a key
2 from the outside.

3 JUDGE SIPPEL: Yeah. I'm going to talk
4 to --

5 MR. COOK: One of those you open and the
6 button pushes that locks the handle.

7 JUDGE SIPPEL: Yeah, I think that's true.
8 Yeah, I mean, you're going to have to take --
9 sometimes you're going to have to police this a little
10 yourselves if you're going to be working after hours,
11 but Ms. Gosse is very good about this, and she's also
12 very concerned about security. So we've never had a
13 problem, and the court report can leave his equipment
14 in there if you want to. I don't know if you want to
15 do that, but certainly the documents will stay here.

16 Okay. Does anybody else have -- oh, I'm
17 going to say, and I've got to be sure I don't miss
18 this, but there will be a proposed findings. There
19 will be reply findings, and then I'm going to set a
20 period of time of about ten days beyond that for the
21 Bureau's comments. Would that be all right?

22 You may participate in findings. That's

1 up to you.

2 MS. GRIFFIN: That's fine, Your Honor.
3 Ten days is fine.

4 JUDGE SIPPEL: You'd sooner the comment
5 approach?

6 MS. GRIFFIN: Yes, I think so. That would
7 probably --

8 JUDGE SIPPEL: Okay, all right. Well, ten
9 days will be all right.

10 MS. GRIFFIN: Yes.

11 JUDGE SIPPEL: Well, we're not going to
12 set those dates down until we get closer to the end of
13 the hearing, but remind me to be sure I don't miss
14 that.

15 And certainly you're here to, you know,
16 ask questions, examine whatever role you wish to
17 participate in. That's fine.

18 Does anybody have anything more?

19 (No response.)

20 JUDGE SIPPEL: Okay. Let's get on with
21 documents.

22 One more thing before I start. Now, I'm

1 going to give both sides until next Tuesday to get the
2 proposed deposition testimony with the exhibits and
3 all of that type of business identified properly. Is
4 that right, Mr. Campbell? That was what we talked
5 about?

6 MR. CAMPBELL: Correct. For us that
7 certainly is an issue. I assumed it would be an issue
8 for them as well.

9 JUDGE SIPPEL: Well, we'll do it for both
10 sides the same way.

11 MR. SEIVER: I don't think we have that
12 issue on Complainants' side, Your Honor.

13 JUDGE SIPPEL: All right. Well, either
14 way you'll get the time. I just want to get a short
15 order out this afternoon or tomorrow

16 MR. COOK: That should be, Your Honor,
17 only a filing on Gulf Power's behalf of the 18th.

18 JUDGE SIPPEL: All right. That's cool.
19 Okay. Eighteen April, Gulf Power, and that depos plus
20 exhibit.

21 Okay, and then there's going to be a one-
22 day grace period on trial briefs. Okay. And then we

1 have to do something about the written testimony,
2 which somebody mentioned that there would be probably
3 objections and things like that. We'd be into some
4 editing analysis on the record. I don't know when to
5 do that.

6 We could wait until the witness takes the
7 stand and then go over it. Let the witness take the
8 stand and then go over the written.

9 MR. CAMPBELL: I think that would be best
10 simply for purposes of sometimes you'll run into an
11 issue where a relevance objection can be dealt with
12 by something admitted as conditionally relevant, and
13 then on redirect, for example, the foundation is laid.
14 It's more dynamic, I guess, than just the prefiled
15 written allows, and so I think that would probably be
16 more efficient. It may be that the Court would want
17 to question a question about a foundational element or
18 a fact element to help resolve a relevancy objection
19 or a hearsay objection or whatever it may be.

20 So I think that might be helpful.

21 JUDGE SIPPEL: What you say is true. I've
22 done it both ways. Sometimes, you know, we bring our

1 record on admission date subject to, and then when the
2 witness gets on the stand you work clarifications of
3 it. It's probably a little bit cleaner to do it right
4 on the same day. It's just a question of time.

5 Mr. Seiver, how does that --

6 MR. SEIVER: I think that sounds be, Your
7 Honor, with the experts since basically we're going to
8 be having, you know, a lot of experts. We'll do the
9 voir dire and do it at the same time with them --

10 JUDGE SIPPEL: Yes.

11 MR. SEIVER: -- and with the other
12 witnesses. We all know who they are. So that
13 shouldn't be a big deal.

14 JUDGE SIPPEL: Okay. We'll do it that way
15 then. We will do nothing further with the written
16 testimony until the day the witness appears, and then
17 it will be received though as an exhibit independent
18 of the cross examination, of course.

19 Okay. I think that brings us up to date.
20 I'll ask Mr. Seiver then. Are you prepared to
21 introduce your documents, sir?

22 MR. SEIVER: We are, Your Honor, and Mr.

1 Cook is going to start out with the first set of
2 documents.

3 JUDGE SIPPEL: Okay. Thank you.

4 Mr. Cook, I've got one of five; is that
5 correct?

6 MR. COOK: One of thee. We have three.
7 They all should be marked Complainants exhibits on the
8 front, and it's Volume 1 of 3, 2 of 3, and 3 of 3.

9 JUDGE SIPPEL: Oh, I do. Yes, I do. I
10 had them out of order. Okay. One of three. That's
11 a heavy one.

12 MR. COOK: And counsel for Gulf has
13 notified us during one of the breaks towards the end
14 of the morning that their first objection starts at
15 29, but if Your Honor would like a brief proffer or
16 description, I'm prepared to do that for the exhibits
17 between one and 28, before we get to their first
18 objection.

19 JUDGE SIPPEL: Yes. Let's do what's not
20 being objected to. Is it one through 28 we're going
21 to do?

22 MR. COOK: Yes.

1 JUDGE SIPPEL: All right. I see where
2 that is. Okay. Well, let me start by saying that I
3 have this Volume 1 of 3, which is before me and the
4 court reporter, and we're going to consider first
5 documents which have tabs. By tabs they're numbered
6 one through Tab -- what did you say the number was
7 going to be?

8 MR. COOK: Twenty-eight.

9 JUDGE SIPPEL: -- 28.

10 MR. COOK: And then within that there are
11 subgroupings that I can describe to you.

12 JUDGE SIPPEL: All right. If you want to
13 take that and we're going to identify them and then
14 move them into evidence. So if you would take the
15 first grouping that you want to do, Mr. Cook.

16 MR. COOK: Okay. The first grouping is
17 one through seven, and these are exhibits to the
18 testimony of Michael Harrelson, who is one of
19 Complainants' two expert witnesses. The first tab is
20 his CV.

21 JUDGE SIPPEL: All right. Why don't you
22 just identify one through seven and then we'll take

1 them as a group?

2 MR. COOK: Okay. The second tab is a Gulf
3 Power CATV permitting procedure. Your Honor actually
4 already admitted that this morning as part of Gulf
5 Exhibit No. 4.

6 JUDGE SIPPEL: All right.

7 MR. COOK: Tab 3, Osmose statement of
8 work, joint use audit with revised appendices. I
9 believe that's been admitted this morning as part of
10 Gulf Exhibit 40.

11 Tab No. 4, the list of documents and
12 standards relied upon by Mr. Harrelson in doing his
13 work in this case.

14 Tab 5 is a series of excerpts, perhaps 15
15 or 20 in number, of pages from the Southern Company,
16 which is the parent of Gulf Power. Southern Company
17 overhead distribution construction manual, and Your
18 Honor this morning has admitted the whole manual there
19 already as Gulf Exhibit 11.

20 And then finally, 6 and 7 Tabs of
21 Complainants' first binder are Mr. Harrelson's
22 photographs and written analysis of both Gulf's 50

1 poles that they've identified and our 50 poles that
2 the Complainants have identified. So --

3 JUDGE SIPPEL: Exhibit 6 is Gulf's 50
4 poles, and Exhibit 7?

5 MR. COOK: And seven is Complainants' 50
6 poles.

7 JUDGE SIPPEL: Complainants'.

8 MR. COOK: So that's one through seven.

9 JUDGE SIPPEL: All right. Well, one
10 through seven, the tabbed documents are marked for
11 identification as -- will this be Complainants'
12 exhibit?

13 MR. COOK: These are -- all of these are
14 going to be entitled Complainants' exhibits.

15 JUDGE SIPPEL: That's what you want them
16 titled as?

17 MR. COOK: Exactly.

18 JUDGE SIPPEL: Complainants' Exhibits 1
19 through 7 marked for identification as proffered by
20 Mr. Cook.

21 Is there any objection? Yes, sir.

22 THE REPORTER: My exhibit does not match